



JRW/AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: DON MICHAEL=27

In re Application of: ) Art Unit: 3731  
T. Anthony DON MICHAEL )  
Appln. No.: 10/005,699 ) Examiner: U. HO  
Filed: December 7, 2001 ) Washington, D.C.  
For: DISTAL PROTECTION DOUBLE ) Confirmation No. 7636  
BALLOON CATHETER ) April 21, 2005

**REQUEST FOR WITHDRAWAL OF FINALITY OF REJECTION**

Honorable Commissioner for Patents  
Customer Service Window  
Randolph Building, Mail Stop AF  
401 Dulany Street  
Alexandria, VA 22314

Sir:

This is not a substantive response to the Office Action of March 30, 2005.

That Action presents a final rejection, based on a newly cited reference, of claims that were not amended in the previous Response, and were last amended in the Response filed July 19, 2004.

In section 6 of the Action of March 30, 2005, the Examiner alleges that the Amendment filed July 19, 2004, necessitated the new grounds of rejection.

It is submitted that such a position is unjustified and unsupported by the facts. In the Amendment filed July 19, 2004, claim 1 was amended to include a recitation that was

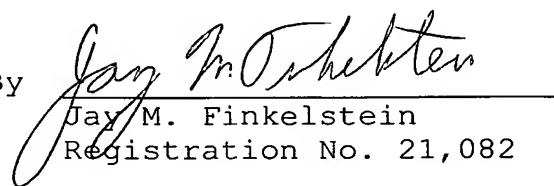
previously presented in dependent claims 5 and 8. In other words, claim 1, after amendment, was clearly broader than original claim 8. Any justifiable prior art rejection of claim 8 would also justify the same prior art rejection of amended claim 1. Therefore, the amendment that was made to claim 1 could not have justified a new ground of rejection based on newly cited art. Elementary fairness dictates that when a rejection is based on newly cited art, not necessitated by any claim amendments, such rejection not be made final in order to preserve applicant's right to submit further amendments and arguments in response to a rejection made for the first time.

Accordingly, it is requested that the finality of the rejection be withdrawn.

Respectfully submitted,

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By

  
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